

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

R POWER BIOFUELS, LLC,
Plaintiff,
v.
CHEMEX LLC,
Defendant.

Case No. [5:16-cv-00716-LHK](#) (HRL)

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT NO. 1**

Re: Dkt. No. 94

INTRODUCTION

R Power Biofuels, LLC (“R Power”) sues Chemex, LLC (“Chemex”) for breach of contract (and other claims) relating to defendant’s design and fabrication of seven modular production components for a biodiesel plant in Watsonville. Basically, plaintiff alleges that Chemex used shoddy parts and bad engineering to build a plant that could not meet the specified production requirements.

In Discovery Dispute Joint Report (“DDJR”) #1, defendant seeks an order compelling plaintiff to produce documents from previous, third party litigation that ended in a settlement that included assignment to R Power of the claims it now asserts against Chemex in this litigation. R Power says that, with respect to the prior litigation, it has (or will) turn over anything that discusses Chemex or the construction or operation of the biodiesel plant, and anything beyond that

1 is too much.¹

2 DISCUSSION

3 R Power had an ownership interest in a company called AGRON. AGRON had
4 proprietary technology for an improved process for manufacturing biodiesel. R Power formed a
5 company named North Star to use the AGRON technology to build unique biodiesel production
6 plants on a commercial scale. The first one was to be built in Watsonville. To finance the project,
7 AGRON borrowed money from a subsidiary of a company called Agri Beef. R Power guaranteed
8 the loan. It was contemplated that the loan would be paid off from the revenue stream to be
9 generated by the Watsonville plant.

10 Chemex had previously successfully built a pilot biodiesel plant for AGRON using
11 AGRON's technology, and, on the strength of that success, AGRON and Chemex entered into two
12 contracts: Chemex would design the seven modules that would be integrated to comprise the
13 Watsonville facility, and it would then fabricate and install them. The project did not turn out
14 well, and despite much effort and expense, the plant never achieved anything close to the required
15 production level.

16 Because the Watsonville plant failed to measure up to expectations, the Agri Beef loan
17 went into default. Agri Beef sued R Power in federal court in Idaho to foreclose on R Power's
18 assets under the loan guarantee. R Power filed a derivative action (nominally on behalf of North
19 Star) in Alameda County Superior Court against Agri Beef and others for a variety of claimed
20 legal transgressions. No discovery was ever done in either suit. They were both mediated before
21 the Honorable Vaughn Walker (ret.), and the parties reached a confidential settlement. One piece
22 of the settlement was that AGRON (and Agri Beef as well) assigned whatever claims they had
23 against Chemex to R Power. According to R Power, both lawsuits were only about the lender-
24 borrower/guarantor relationships and associated documentation. Chemex's work was not an issue.

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26 ¹ Noting that discovery is set to close on April 28, Chemex asks this court for an "immediate
27 production of all the documents discussed above within two weeks of the filing of this joint
28 report" (filed on March 17). The claimed unsatisfactory response to the request for production of
documents has been on the table for months. The court refers counsel to the first paragraph in its
Standing Order Re: Civil Discovery Disputes that cautions against waiting until "some important
looming deadline" before seeking help from the court that it may not be able to offer right away.

1 In the present lawsuit, Chemex propounded to R Power Request for Production of Documents
2 (“RFP”) No. 12: “All documents, including but not limited to communications, relating to the
3 alleged assignment of AGRON’s ‘claims against Chemex arising out of Chemex’s work,’ . . .
4 including without limitation all documents relating to [R Power’s] Confidential Settlement
5 Agreement entered May 21, 2015 [with AGRON and Agri Beef].” (Dkt. 94 at 41).

6 In its response, R Power agreed to produce the documentation of the assignment to it of
7 AGRON’s rights. It also agreed to produce any pleadings in the two earlier lawsuits that reference
8 Chemex or the biodiesel plant’s construction or operability. There was no discovery. Any other
9 documentation would be about preparing to defend one lawsuit and about filing the other one, plus
10 mediation-related material. R Power argues such information is irrelevant or privileged (or both).

11 Chemex argues that documents “related to the settlement” of the two prior lawsuits are
12 “potentially relevant” to the claims and defenses in this suit. The word that counts is
13 “potentially.” Defendant goes on to opine that the documents “may contain information” that
14 relates to the alleged defects at the Watsonville plant and who caused them. The key word there is
15 “may.” This appears to the court to be a fishing expedition into an incidental topic and not a
16 focused inquiry on relevant subject matter. It does not meet either the relevance or the
17 proportionality requirements of Federal Rules of Civil Procedure, Rule 26(b)(1).

18 R Power makes a pretty good argument that a mediation privilege applies. And, although
19 it has not offered a privilege log, the attorney-client privilege would surely be implicated if the
20 court were to order production as requested by Chemex. The court does not need to reach these
21 questions.

22 Chemex’s request for an order requiring further production responsive to RFP #12 is
23 denied.

24 SO ORDERED.

25 Dated: March 28, 2017

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HOWARD R. LLOYD
United States Magistrate Judge

5:16-cv-00716-LHK Notice has been electronically mailed to:

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